

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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9100.00-00

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-130173-13

RE:

Date: DECEMBER 16, 2013

Legend

Decedent	=
Personal Representative	=
Child 1	=
Child 2	=
Child 3	=
Estate	=
Trust	=
Date 1	=
Date 2	=
Year 1	=
Attorney	=
Accountant	=
X	=

Dear :

This letter responds to your authorized representative's letter dated June 26, 2013, requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to elect out of the generation-skipping transfer (GST) exemption automatic allocation rules.

The facts and representations submitted are summarized as follows:

On Date 1, a date in Year 1, Decedent established an inter vivos irrevocable trust (Trust) for the primary benefit of Donor's children, Child 1, Child 2, and Child 3. Child 1, Child 2, and Child 3 are the primary beneficiaries of Trust and their descendants are

eligible beneficiaries of Trust. Trust was funded with publically traded stock. Decedent died on Date 2.

Attorney prepared the Trust agreement. The terms of Trust provide that each child has the right to \$X of net income and principal annually. In the event a beneficiary dies prior to the exhaustion of Trust, the beneficiary's share is required to be distributed in equal shares to the deceased beneficiary's descendants. Trust was intended to be a short term trust to provide income to Decedent's children for a limited duration and was intended to terminate prior to Child 1, Child 2, and Child 3's deaths

Accountant prepared the Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, which was timely filed. Accountant stated in his affidavit that he was unaware that Trust was potentially a GST trust and listed the gift to Trust on Part I of Schedule A. As a result, the gift was not shown on Part 3 of Schedule A, where the option of making an election under § 2632(c) out of the automation allocation of GST exemption is provided. Thus, the GST exemption was automatically allocated to the gift to Trust in Year 1.

The error was discovered when Attorney was preparing Decedents' Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return and reviewed Decedent's Year 1 Form 709.

LAW AND ANALYSIS

Section 2601 provides that a tax is imposed on every generation-skipping transfer (GST). Section 2611(a) provides that the term "generation-skipping transfer" means: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2602 provides that the amount of the tax imposed by § 2601 is the taxable amount multiplied by the applicable rate.

Section 2631(a) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption amount which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2631(c) provides that, for purposes of § 2631(a), the GST exemption amount for any calendar year shall be equal to the applicable exclusion amount under § 2010(c) for such calendar year.

Section 2632(a)(1) provides that any allocation by an individual of his or her GST exemption may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate, regardless of whether such a return is required to be filed. Section 2632(a)(2) provides that the manner in which allocations are to be made shall be prescribed by forms or regulations issued by the Secretary.

Section 2632(c)(1) provides that if any individual makes an indirect skip during his lifetime, any unused portion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero (automatic allocation). If the amount of the indirect skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred.

Section 2632(c)(2) provides that for purposes of § 2632(c)(1), the unused portion of an individual's GST exemption is that portion of such exemption which has not previously been allocated by such individual (or treated as allocated under § 2632(b)(1) or § 2632(c)(1)).

Section 2632(c)(5)(A) provides that an individual -- (i) may elect to have this subsection not apply to -- (I) an indirect skip, or (II) any or all transfers made by such individual to a particular trust, and (ii) may elect to treat any trust as a GST trust for purposes of this subsection with respect to any or all transfers made by such individual to such trust.

Section 2632(c)(5)(B)(ii) provides that an election under clause (i)(II) or (ii) of § 2632(c)(5)(A) may be made on a timely filed gift tax return for the calendar year for which the election is to become effective.

Section 26.2632-1(b)(4)(i) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than a direct skip, is made on Form 709. The allocation must clearly identify the trust to which the allocation is made, the amount of GST exemption allocated to it, and if the allocation is late or if an inclusion ratio greater than zero is claimed, the value of the trust assets at the effective date of the allocation.

Section 2642(g)(1)(A) provides, that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under § 2642(g)(1), the Secretary shall take into account all relevant circumstances, including

evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that, under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a generation-skipping transfer trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election.

Section 301.9100-2 provides an automatic extension of time for making certain elections. Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute). In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Section 301.9100-3(a) provides, in part, that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1) provides, in part, except as provided in § 301.9100-(b)(3)(i) through (iii), that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, Personal Representative of Estate is granted an extension of time of 120 days from the date of this letter to make an election under § 2632(c)(5) that the automatic allocation rules do not apply to the Year 1 transfer to Trust. The election out will be effective as of the date of the transfer, Date 1. The election should be made on supplemental Form 709 for Year 1. The Form 709 should be filed with the Cincinnati Service Center at the following address: Internal Revenue Service, Cincinnati Service Center - Stop 82, Cincinnati, OH 45999. You should attach a

copy of this letter to the supplemental Form 709. We have enclosed a copy for this purpose.

In accordance with the Power of Attorney on file with this office, we have sent a copy of this letter to your authorized representatives.

Except as expressly provided herein, we neither express nor imply any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the Taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Lorraine E. Gardner, Senior Counsel
Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for § 6110 purposes
Copy of this letter